

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED
MAR 31 2005

Pat Barlow
Plaintiff,

v.

Wal-Mart Inc., Sam's
Club, Weider Nutrition
Group
Defendants.

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Civ. NO.

H-05-1121

Plaintiff Demands
Trial by Jury

Michael N. Milby, Clerk

ORIGINAL COMPLAINT

JURISDICTIONAL STATEMENT

1. This Court has jurisdiction of the subject matter of the within action pursuant to 28 U.S.C. Section 1332, as the action is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

PARTIES

2. Plaintiff is a citizen of the State of Texas. At the time of this incident Plaintiff resided in Montgomery County.
3. Defendant Weider Nutrition Group is a corporation organized and existing under the laws of the State of

Utah with its principal place of business at 2002 South 5070 West, Salt Lake City, Utah 84104-4726 and is the manufacturer of a Weider Glucosamine Chondroitin.

4. Defendant Wal-Mart Inc. is a corporation organized and existing under the laws of the State of Arkansas with its principal place of business at 702 S. W. 8th Street, Bentonville, AK 72716 and its Registered Agent The Corporation Company 425 W. Capitol Avenue Suite 1700, Little Rock, AK 72201 and is the seller/distributor of Weider Glucosamine Chondroitin.
5. Defendant Sam's Club is a corporation organized and existing under the laws of the State of Arkansas with its principal place of business at 702 S.W. 8th Street, Bentonville, AK 72716 and its Registered Agent The Corporation Company 425 W. Capitol Avenue, Suite 1700, Little Rock, AK 72201 and is the seller/distributor of Weider Glucosamine Chondroitin.

COUNT I

6. On or about March, 2003 plaintiff purchased a bottle of Weider Glucosamine Chondroitin from Sam's Club in Conroe, Texas.

7. Subsequently, Plaintiff took the dosage prescribed on the bottle.
8. Plaintiff was injured as a result of taking the supplement in that she suffered anaphylactic distress.
9. Defendant manufacturer was negligent and breached a duty of care owed to Plaintiff in the manufacture of its supplement by, *inter alia*:
 - (a) failing to provide any warnings to individuals who are allergic to the constituents of defendant's product and for the protection of persons in a position similar to that of Plaintiff including, but not limited to, the failure to provide any warning or cautionary instruction label on the product bottle so that individuals such as plaintiff would be adequately warned of the consequence from taking defendant's product if they are allergic to certain constituents of the supplement
10. As a result of the Defendant's negligence, Plaintiff suffered with severe allergic reaction for which she was hospitalized, and continue to suffer adverse effects resulting from her encounter with Defendant's product.
11. The acts complained of herein were reasonably foreseeable by Defendant as the manufacturer of the supplement.

12. As a direct and proximate result of the acts complained of herein, Plaintiff suffered great injuries and damages including, but not limited to, physical and emotional injuries, costs for treating such injuries, loss of earnings capacity, pain and suffering, and other consequential damages.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount, which exceeds the jurisdictional requirements of this Court plus interest and costs.

COUNT II

13. Paragraph 1 through 12 are incorporated herein as if set forth again in full.

14. Sometime prior to March, 2003, Defendant Weider manufactured supplement, and placed it into the stream of commerce.

15. Defendant's Wal-Mart and Sam's Club were seller's engaged in the business of selling products such as the supplement.

16. The supplement was sold without a warning label on the bottle, which made it unreasonably dangerous to persons such as Plaintiff, who could reasonably have been

expected to come into contact with, use or be affected by the supplement.

17. The supplement was expected to, and did, reach Plaintiff without material modification to its label noting cautionary usage.
18. The Defendant created a substantial risk of harm for those reasonably expected to be affected by the supplement, including Plaintiff, as a result of the lack of warning.
19. Prior to sustaining her injuries, Plaintiff neither knew nor should have known of any problem with the supplement.
20. As a direct and proximate result of the lack of warning on the supplement, and the breaches complained of herein, Plaintiff suffered grave injuries and damages including, but not limited to, physical and emotional injuries, costs for treating such injuries, loss of earning capacity, pain and suffering, and other consequential damages.

COUNT III

21. Paragraphs 1-20 are incorporated herein as if set forth again in full.
22. Defendants owed a duty to exercise reasonable care in all aspects concerning the design, manufacture, marketing,

testing, distribution and/or selling of the subject laxatives and their incorporated component ingredients.

23. Defendants were negligent and grossly negligent and breached duties owed to Plaintiff by the conduct alleged and with respect to the supplement made the subject of this lawsuit.

24. Accordingly, Defendants are jointly and severally liable to Plaintiff for all damages claimed including punitive damages as a result of Defendant's gross negligence.

COUNT IV

25. Paragraphs 1-24 are incorporated herein as if set forth again in full.

26. All Defendant's are liable to Plaintiff for breaching their duty to warn Plaintiff of adverse health effects and complications associated with the use of subject supplement.

27. Each Defendant was involved in the manufacturing, designing, testing, marketing, distribution, and/or selling of Plaintiffs' subject drug. Accordingly, each Defendant was involved in creating the risks associated with the subject drugs.

28. Each Defendant knew, should have known, or should have discovered risks associated with the subject drugs that were the result of their design, testing, use and/or manufacturing.
29. Each Defendant has a continuing duty to warn Plaintiff. Each Defendant breached this duty.
30. Defendants joint and several breach of this duty is the proximate cause of Plaintiff's injuries.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount, which exceeds the jurisdictional requirements of this Court, plus interest and costs.

Respectfully submitted,

Grover G. Hankins

The Hankins Law Firm, PLLC
Grover G. Hankins
Texas Bar No. 00795895
616 W. Main Street
League City, TX 77573
281-316-9551
281-316-9552 fax

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Original Complaint was hereby filed and served on this 31st day of March, 2005 to all counsel of record.

Grover G. Hankins

Grover G. Hankins

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Pat Barlow

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

Montgomery

(c) Attorney's (Firm Name, Address, and Telephone Number)

Grover Hawkins 616 W. Main League City TX

DEFENDANTSWal-Mart Inc., Sam's Club,
Weider Nutrition Group

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

H-05-1121

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff
(For Diversity Cases Only) Michael N. Milby, Clerk Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Brief description of cause:

Plaintiff not waived to effects of glucosamine ad. injured.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE 3/31/05 SIGNATURE OF ATTORNEY OF RECORD

Grover G. Hawkins

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE